



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

15

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,473	12/17/2001	Gregory Moulton		3633

7590 07/13/2004

Thomas A. O'Rourke  
Bodner & O'Rourke LLP.  
425 broadhollow Rd., Ste. 108  
Melville, NY 11747

EXAMINER
----------

HOOK, JAMES F

ART UNIT	PAPER NUMBER
----------	--------------

3752

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/023,473

Applicant(s)

MOULTON ET AL.

Examiner

James F. Hook

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9, 12, 13, 15, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavlic (474). The reference to Pavlic discloses the recited flexible hose for carrying fluids comprising ends of the hose, the hose is in the retracted position when no tensile force is place on an end as seen in figures 2, a thermoplastic cover 14 having a helical member 12 adhered to the cover, the helical member can carry electricity being formed of steel wire 19 including extra wire 21, the hose has peaks and valleys formed by corrugations where the valleys are virtually eliminated as seen in figure 2 when the hose is in the contracted state, the valleys are U shaped, and the valleys get wider as the hose is stretched but at least the upper part of the sidewalls stays "generally" the same, there is only a single helical member of constant pitch, the wires are connected to a switch to control the motor of the vacuum via electricity, the second wire is next to the first wire, and it is inherent that the cover layer would have to be extruded since there are no seams suggesting a wrapped method of forming the outer layer and there is no other known way to form a seamless outer tubular layer other than extrusion, however, such is also merely a method step in an article claim,

Art Unit: 3752

and would not make the outer layer materially different from that shown in Pavlic and would have little patentable weight on a product claim.

Claims 1-4, 6-9, 12, 13, 15-17, 19, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Duff (264). The reference to Duff discloses the recited flexible hose for carrying fluids comprising ends of the hose, the hose is in the retracted position when no tensile force is place on an end as seen in figure 2, a thermoplastic cover 21 having a helical member 20 adhered to the cover, the helical member can carry electricity being formed of steel wires 25,26 (col. 4, lines 33-40) which can also be copper or aluminum clad steel wires, the hose has peaks and valleys formed by corrugations where the valleys are virtually eliminated as seen in figure 2 when the hose is in the contracted state, the valleys are U shaped, and the valleys get wider as the hose is stretched but at least the upper part of the sidewalls stays "generally" the same, there is only a single helical member of constant pitch, the wires are connected to a switch to control the motor of the vacuum via electricity (col. 2, lines 45-58), the second wire is next to the first wire, the covering over the wires forming the helical member is in a figure 8 shape as seen in figure 2, and it is inherent that the cover layer would have to be extruded since there are no seams suggesting a wrapped method of forming the outer layer and there is no other known way to form a seamless outer tubular layer other than extrusion, however, such is also merely a method step in an article claim, and would not make the outer layer materially different from that shown in Duff and would have little patentable weight on a product claim.

Art Unit: 3752

Claims 1-4, 6-9, 12, 13, 15-17, 19, and 21-24 are rejected under 35

U.S.C. 102(b) as being anticipated by Fujimoto. The patent to Fujimoto discloses the recited flexible hose for carrying fluids comprising ends of the hose, the hose is in the retracted position when no tensile force is place on an end as seen in figures 1 and 3, a thermoplastic cover 3 having a helical member 5 adhered to the covers inner surface, the helical member can carry electricity being formed of wires, the hose has peaks and valleys formed by corrugations where the valleys are virtually eliminated as seen in figures 1 and 3 when the hose is in the contracted state, the valleys are U shaped, the valleys get wider as the hose is stretched but at least the upper part of the sidewalls stays "generally" the same, including having a second conductive wire 6, where the wire 6 can be resin coated copper wire where the resin is the same as used for the cover, a steel wire 5 can also be provided, and the cross section of the wires in figure 1 form a shape that is a "figure 8", the wires can be stranded copper wires, or copper clad steel wires. With respect to claims 21 and 24, the patent to Fujimoto discloses the recited structure in article claims but is unclear as to the method used to form the outer layer, however, such is considered to be a method step in an article claim which would not materially change the final product, and since the article limitations are met by the reference it is being rejected under both 102/103 pending evidence to the contrary that the final product of Fujimoto would be different using a different method to form the outer layer.

***Claim Rejections - 35 USC § 103***

Art Unit: 3752

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 10, 11, 14, 18, 20, 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto, Pavlic (474), or Duff (264). The patents to Fujimoto, Duff, and Pavlic disclose all of the recited structure with the exception of disclosing dimensions of the peaks and distances they are spaced, amount of extension, specific gauges of the wires used, forming the outer layer by extrusion and using stranded copper wires. It is considered obvious choices of mechanical expedients to use routine experimentation to arrive at optimum values for the intended use of the hose, including choosing the needed gauge of wire, and various sizes of the peaks and gaps to meet the needs of the user. The use of stranded copper wire over solid copper is considered old and well known, to substitute a stranded wire for a solid to achieve more flexibility. It would have been obvious to one skilled in the art to modify the copper wire in Fujimoto, Duff, or Pavlic to be stranded copper wire to provide more flexibility, to use any gauge wire that is required for the current to be carried as such is an obvious choice of mechanical expedients, and to form the values and gaps of any size, or amount of extension, as such is merely a choice of mechanical expedients. It is believed that the patent to Fujimoto, Duff, and Pavlic meet the claimed structure above and that the method step does not provide any further limitations to the article claim in that the method would not change the final product, however, should it be successfully

Art Unit: 3752

argued that the method step should hold patentable weight, and further in that Duff and Pavlic inherently can't be formed by extrusion, it is considered that such is merely a choice of mechanical expedients where it is old and well known to form tubes of any methods including winding tape layers or extruding and such would only require routine skill in the art to use whichever method proved cheaper and easier.

### ***Response to Arguments***

Applicant's arguments filed April 19, 2004 have been fully considered but they are not persuasive. With respect to the arguments directed toward Fujimoto, the claim language sets forth that a thermoplastic cover formed of a single wall, it is considered that Fujimoto meets this claim language in that the cover layer is formed of layer 3 which is overlapped to form a single wall as required. Since the term "comprising" is used such is open ended and the reference may have additional structure including an inner layer and still meet the claim language which requires the outer layer be a single wall which as explained above is met by Fujimoto. All other rejections are moot in that they were either dropped or new references were used to meet the new claim language.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

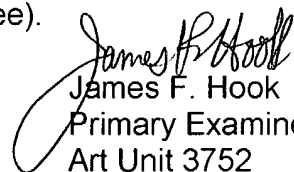
Art Unit: 3752

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3752